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LABOUR DEPARTMENT

The 26th August, 1986

No. 9/6/86-6Lab/6181.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s Haryana Warehousing Corporation, Chandigarh:—

## IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 298 of 1984

(Old No. 256 of 1982)

SHRI SAT PAL, WORKMAN AND THE MANAGEMENT OF THE MESSRS HARYANA WARE HOUSING CORPORATION, CHANDIGARH

Present:—

Shri Rajeshwar Nath for the workman.

Shri Janak Raj Sharma for respondent.

## AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Sat Pal, V. & P. O. Bharog via Jatwar, Teh. Naraingarh (Ambala) and Messrs Haryana Warehousing Corporation, Chandigarh originally to Labour Court, Faridabad. The terms of the reference are as under:—

“Whether termination of services of Shri Sat Pal, workman, is just and correct, if not, to what relief is he entitled ?”

Labour Court at Ambala was constituted in April, 1894, So this reference was received by transfer.

Sat Pal, workman alleged that he joined service of respondent-management Haryana Warehousing Corporation on 1st June, 1977 as a Godown Attendant-cum-Watchman. He was doing his night duty regularly with effect from 3rd May, 1981 to 15th May, 1981 as per orders of Manager, Mandi Dabwali. Thereafter his duty was changed on 18th May, 1981 from 8 A.M. to 5-30 P.M. On that day he was suffering from Dysentery, so he submitted an application to the Manager for grant of four days casual leave from 18th May, 1981 to 21st May, 1981. On 22nd May, 1981 he submitted fitness certificate from Civil Hospital, Mandi Dabwali on the same day he received a Telegram from his wife and came to know that his wife was seriously ill, so he took leave for 23rd and 24th May, 1981 and reached at his Village Bharog. He found that the condition of his wife was serious, so he issued a Telegram for extension of his leave from 25th May, 1981 to 8th June, 1981. During this period his wife did not recover from illness he got dispatched another telegram on 9th June, 1981 for extension of his leave up to 23rd June, 1981. During this period he approached District Manager, Dabwali for disbursement of his pay but his pay was not released. He joined duty on 24th June, 1981 but a registered letter was received by him on 15th June, 1981 mentioning therein that his services are no longer required alleging his absence from duty w.e.f. 15th May, 1981. It was not intimated whether his leave has been rejected or he was treated as absent from duty. So he prayed that his termination was illegal in violation of article 309 of Constitution of India. He prayed that he be reinstated.

Respondent-management contested the dispute and contended that the services of Sat Pal were dispensed with by the respondent-management in accordance with terms and conditions of his appointment and these were no longer required by the Corporation. At the time of termination of his services there was serious charge against him that he was wilfully absent from duty without any intimation. So his services were dispensed with according to terms of regulation 12 of staff regulation Act. It was further contended that no notice was necessary in the case of Temporary Employee of class four but his services are liable to be terminated without any notice by the terms and conditions of his appointment. Nor any appeal against that termination order lies either with the Chairman of the Corporation or that any other higher authority.

Workman filed replication he controverted the allegations of respondent-management.

On the pleadings of the parties the following issues were framed by my Lt. Predecessor for just decision of this Industrial Dispute.

*Issues*

1. As per reference.

I have heard Shri Rajeshwar Nath for workman and Shri Janak Raj Sharma for respondent-management and have perused the Oral and documentary evidence placed on the file. My issue-wise findings are as under :

*Issue No. 1*

In support of this issue respondent-management examined Shri Mahipaul, District Manager, Haryana Warehousing Corporation, Ambala City as MW-1. He stated that Sat Pal, workman joined service of respondent-management on 16th May, 1977 as a Godown Attendant-cum-Watchman. He was posted at Yamuna Nagar. The work and conduct of the workman was most unsatisfactory from the very beginning. Many Explanations were called which were replied by the workman but his replies were found most unsatisfactory. Photostat copy of such letters are Ex-M-1 to M-5 which are dated 21st November, 1977, 24th November, 1977, 11th April, 1978 and 9th January, 1979. *Vide* letter Ex-M-6, workman was transferred on 6th February, 1979 to Kurukshetra even at that place his work and conduct was not found up to the mark. He created nuisance neither he himself worked nor he allowed the Manager to discharge his duty properly. Manager incharge, Depot, Kurukshetra complained against him. Copies of those complaints are Ex-M-7 to Ex-M-10 on that very ground workman was suspended. Copy of suspension order is Ex-M-11. Thereafter a charge-sheet was issued. Copy of charge-sheet is Ex-M-12. Copy of detailed charges was attached with this charge-sheet. Workman,—*vide* application Ex-M-13 requested for inspection for official record such a permission was recorded,—*vide* Ex-M-14. But even then workman did not reply to charge-sheet,—*vide* Ex-M-15. Workman submitted in writing that he has inspected the record. The Department considered the matter of the workman and took a lenient view and he was punished for his conduct. His two increments with cummulative affect were stopped. Photostat copy of orders is Ex-M-16. Thereafter under the direction of M.D. he was posted at Dabwali. The incharge of Dabwali was also unhappy with the work and conduct of workman. Who complained to District Manager, Sirsa. Copies of those complaints are Ex-M-17-18. Workman threatened the staff of Dabwali and misbehaved with them. Copy of that threat and of misbehaviour is Ex-M-19. Explanation of Sat Pal was called for copy of the same is Ex-M-20 but no reply was submitted by Sat Pal to the Department. On 15th May, 1981 he absented himself about his absence a report was lodged copy of the same is Ex-M-21. When the workman continuously remained absent without any permission due to that fact his services were dispensed with,—*vide* order Ex-M-22. In cross-examination this witness stated that when Sat Pal absented no letter was written to him regarding his absence. He denied the suggestion that workman remained ill from 17th May, 1981 to 23rd May, 1981. Nor he remained admitted in Civil Hospital Dabwali, nor he submitted any medical certificate to the Department. In this respect no Telegram dated 25th May, 1981, 5th June, 1981 were received by the department. He further stated that no show-cause, notice no charge-sheet were issued to workman before dispensing his services because the rules and regulations of the Corporation had been framed such a procedure and copy of rules and regulations of Corporation is Ex-M-23.

To rebut the evidence of the management Sat Pal examined himself supported his case as narrated above. He stated that in Nov., 77 his son died he applied for leave but the respondent sanctioned his leave without pay. He further stated that on 22nd May, 1981 he was on duty he received Telegram of his wife left for his native village had been dispatching Telegrams as well as registered letter postal receipt is Ex-AW-1/7. He was not issued any show-cause notice or charge-sheet before termination of his services, nor any retrenchment compensation was paid to him. He was not given any opportunity to lead defence evidence he stated that at Kurukshetra regarding his misconduct, charge-sheet was given to him and thereafter; he was punished by stoppage of two annual increments with cummulative effect. In cross-examination this witness admitted that receipt of Telegram copy of application, dated 22nd May, 1981 are not with him He admitted that his service conditions are governed,—*vide* the staff rules and regulations of Corporation. He stated that his services were wrongly terminated.

In view of this oral and documentary evidence picture of the present dispute between the parties is clear.

Workman joined service of respondent-management on 1st June, 1977 posted at Yamuna Nagar where his work and conduct was found most unsatisfactory. He was shifted to Kurukshetra. He indulged in disobedience, insubordination and had been showing disrespect to superiors due to the fact that his two increments were stopped with cummulative effect as admitted by the workman himself.

After the above punishment he was transferred to Dabwali where again he repeated the same mis-conduct, he indulged in quarrel with his superiors. Complaints were made against him to the M.D. Thereafter he remained absent from 17th May, 1985 onwards without getting his leave sanctioned. The Department feeling annoyed with his past mis-conduct as well as wilful absence from duty. After wilful absence when applicant appeared in the office he came to know that on account of his wilful absence from duty his services have been terminated.

While leading evidence in this case the workman failed to file any receipt from the Telegraph Office for having issued Telegram for extension of leave. He did not produce any evidence inspite of, the fact that from 17th May, 1981 to 22nd May, 1981 he was himself ill nor he submitted any medical certificate that from 22nd May, 1981 onwards since how long his wife remained ill so it shows that the workman remained wilful absent without getting any leave sanctioned from his duty. Para-12 of staff regulations copy of the same is Ex-M-23 reads that termination of services of any employee of any class but his own probation (except those on probation in a promotion case) may be terminated by the appointing authority at any time by giving him one month notice or two month in case of confirmed employees or basic pay including dearness pay in lieu thereof. Provided that such notice shall not be necessary in the case of temporary employee of class IV employees whose services is terminable without such notice by the terms and conditions of his appointment and such a penalty as in the case in hand can be imposed under rule-18 of the staff regulations act.

In view of the above discussions I do not feel prejudice with the past history, conduct and behaviour of the workman but since the workman remained wilful absent and the management proceeded to dispense with his services in accordance with the staff regulations. So this termination is justified and correct.

The workman has not challenged first of all this termination under Industrial Disputes Act. He has simply prayed relief under article 309 of Indian Constitution when his services are strictly and purely governed,—vide staff regulation Ex-M-23. So I am to strictly examined and decide his case in accordance with staff regulations and not under the Industrial Dispute Act. Wilful absence is a serious lapse on the part of the workman, so his termination is legal as well as correct, so this issue is decided, in favour of management and against workman. I pass award regarding the dispute in hand accordingly.

V. P. CHAUDHARY

Dated the 14th June, 1986.

Presiding Officer,  
Labour Court, Ambala.

Endst. No. 1750, dated 20th June, 1986.

Forwarded (four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,  
Labour Court, Ambala.

No. 9/7/86-6Lab./6843.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Mohan Spinning Mills, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 45 of 85

between

SHRI RAJINDER PARSHAD, WORKMAN, AND THE MANAGEMENT OF M/S MOHAN SPINNING MILLS, ROHTAK

Present.—

Shri Raghbir Singh, A. R. for, the workman.

Shri M. M. Kaushal, A. R., for the management.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Rajinder Parshad and the management of M/s. Mohan Spinning Mills, Rohtak, to this court, for adjudication,—*vide Haryana Government Gazette Notification No. 11556—61*, dated 21st March, 1985 :—

Whether the termination of services of Shri Rajinder Parshad, is justified and in order ?  
If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner in a nut-shell is that he was employed with the respondent as a Head Doffer since 21st June, 1967 and his last wages drawn were Rs. 621-25 and that the respondent choose to terminate his services unlawfully,—*vide* his order dated 31st August, 1984 without conducting any domestic probe against him and in flagrant dis-regard of the Certified Standing Orders applicable upon the respondent company. *Inter alia* it is alleged that his termination was motivated by ulterior consideration to punish him for his union activities as the petitioner was Joint Secretary of the Cotton Textile Workers Union. So, there is a prayer for reinstatement with continuity of service and full back wages.

3. In the detailed reply filed by the respondent, it is alleged that there were about 1300 to 1500 workers employed in the respondent Company and the settlement was arrived at between the workers and the management in the year 1981, valid for a period of two years, but since there was a mushroom growth unions in the respondent company which were not functioning in tandem, so the period from 1982 to 1984 was full of turmoil, during which work force resorted to strikes, go slow tactics and the management in order to pacify the workforce arrived at a number of settlements, which were not adhered to by the unions because of *inter se* rivalries, resulting in complete break down in production, because the respondent unit is functioning as a continuous process, in case, any wing of the production stops/strikes work, entire production process is disrupted resulting in huge losses in production. In the same vein it is alleged that settlement was arrived at on 25th May, 1984 wherein the workforce undertook not to go slow tactics but without any result. So, the dispute was carried to the labour authorities by the management and conciliation proceedings were conducted by the Deputy Labour Commissioner and also by the Labour Commissioner but no amicable settlement was arrived at because of the un-cooperative and adamant attitude adopted by the various unions operating in the respondent company. It is further alleged that since there was no law and order in the respondent company, so the supervisory staff was scared of the workers who used to indulge in acts of violence and under these situations no orderly function of the respondent company was possible. On merits, it is alleged that the petitioner was charge-sheeted and an enquiry was held, in which, he was found guilty but he was awarded lesser punishment,—*vide* order dated 12th July, 1983 and thereafter the applicant again committed a major mis-conduct resulting in large scale indiscipline in the workforce and as such, services of the petitioner were terminated on 14th September, 1984. It is denied that the petitioner was office bearer of any union as alleged or he was dismissed from employment because of union activities. Residuary plea taken is that the petitioner remained gainfully employed after his dismissal and so he shall not be entitled to back wages in case of reinstatement.

4. On the pleadings of the parties, the following issues were settled for decision on 14th May, 1985 :—

1. Whether the reference is bad in law ?
2. Whether the workman remained gainfully employed after his alleged termination ?
3. As per reference.

5. The management examined MW-1 Shri M. K. Gandhi, the then Chief Executive in (the respondent mill, MW-2 Shri Subhash Chander Jain, Labour Officer of the respondent Mill MW-3 Shri J. K. Sharma, Senior Spinning Master. The workman appeared as his own witness.

6. The learned Authorised Representatives of the parties heard.

Issue No. 1

7. There is a plea by the management that since the petitioner was dismissed from employment and the order of reference is regarding termination, so the reference is bad in law. The contention is too legalistic to merits recognition. Termination covers dismissal also. So, on this ground the petitioner cannot fail.

## Issue No. 2

8. From the admission made by the petitioner that he cannot survive without earning, the learned Authorised Representative for the respondent Shri Kaushal contended that all through after his dismissal the workman has remained gainfully employed and as such, he shall not be entitled to back wages, in case of reinstatement. The contention is too flimsy and fanciful. An un-employed workman is entitled to engage himself in odd activities to eke out his existence and such earnings can be held to be solatium and management shall not be entitled to make a cut in back wages on this account, in case of reinstatement.

## Issue No. 3

9. Though alleged by the respondent that the domestic enquiry was held before dismissing the petitioner, there is nothing on the file that any such domestic probe was ever held. Faced with this situation, the learned Authorised Representative of the respondent Shri Kaushal contended that in case of no enquiry into the alleged allegations against the petitioner, the management is entitled to lead evidence in the Court and the Court is bound to give its findings on the basis of evidence adduced before it. On the other hand, the learned Authorised Representative of the petitioner Shri Singh contended that as per the Certified Standing Orders applicable upon the respondent/company, domestic enquiry was a must before services of the petitioner could be dispensed with. In that behalf, he has drawn my attention to clause 5(6) 15A and 15 B of the Certified Standing Orders of the respondent/company. A combined reading of these provisions will go to show that before services of a permanent employee could be dismissed, he had a right to be heard and defend himself. This can only be done, if there is a domestic probe into the allegations of misconduct against the workman. Now the question would be as to whether the management was justified in dispensing with the services of the petitioner without domestic enquiry against the petitioner. On behalf of the respondent, it was contended on the basis of plethora of documents placed upon the file Ex. M-1 to M-101, MW-1/A, MW-2/1, MW-2/B to MW-2/D that the atmosphere in the respondent mill was so surcharged with violence that no domestic enquiry was possible. In that behalf, he has drawn my attention to the statement of Shri M. K. Gandhi, the then Chief Executive of the respondent mill, who passed an order of dismissal against the petitioner. He stated that he remained posted in the respondent mill as Chief Executive from 5th May, 1984 to 10th September, 1984 and that during his tenure there was lot of industrial unrest as the workforce was indulging in acts of gross indiscipline, because the workers used to sit idle outside the working shed and that in that behalf he addressed letters Ex. M-1 to M-16 to the Labour Department, Government of Haryana, leaders of the various unions operating in the respondent mill, drawing their attention to the go slow tactics being adopted by the workmen and not adhering to any of settlement arrived at with them between the year 1982 to 1984. He further stated that since many workers unions had mushroomed in the respondent mill, all and each pulling apart, the management had lot of difficulty in negotiating with the workforce. He further stated that regarding slump in production, the management used to apprise the union leaders through a notice upon the notice board and that the workmen used to threaten, intimidate the senior functionaries of the respondent mill, who used to goad or persuade them to work with dedication.

10. Regarding the charge against the workman, he stated that on 30th August, 1984 the petitioner who was a Head Doffer and had come to the mill premises in "B" shift of the Ring Frame and made a demand that they should be provided eight Doffers in Zinssar section and seven Doffers in Russian section and only then they will start work. Shri Sharma Spinning Master tried to persuade the petitioner to ask the workmen to start the machine because the strength of Doffers is fixed on the basis of work load on the machine and that on that date short strength of doffers were provided, because of less load of work as fine count of yarn was to be manufactured but the workforce did not pay any heed, rather the workman exhorted them to stop work. He further stated that no production was possible in that shift and since the manufacturing process of the respondent mill is a continuous one, other section also suffered, because of the stoppage of work in the Ring Frame Section. The stoppage of work in that shift is not denied by the petitioner when he appeared in the Court as WW-I. He also admitted that production in that shift was nil, but he asserted that he was sacked because he was Joint Secretary of the Textile Workers Union. In corroboration of the claim of the respondent is the statement of MW-3 Shri G. C. Sharma, Senior Spinning Master.

11. The learned Authorised Representative of the petitioner Shri Singh contended that even if, the shift work on that date suffered because of the attitude of the petitioner, the management was not justified in dismissing the services of the workman without holding any domestic enquiry, after which, only guilt of the petitioner could be established. He further contended that even if, for the sake of arguments, it be admitted that on the instigation of the petitioner the machines were not started on that date, there was no justification for the management to have provided less number of Doffers on that date. The comparative chart of the Doffers provided prior to the said date, i. e.

30th August, 1984 and after that date was called for from the respondent mill. The data has been furnished. It is not in dispute that the number of Doffers are provided according to the work-load on the machines. If a fine count is manufactured, the number of Doffers provided is less. Even if, for the sake of arguments, it be admitted that the number of Doffers provided was less than the norms laid down, even then, there was no justification for the petitioner to have struck work and exhort other workmen to do so. From the various letters/communications/notifications/settlements placed on record by the management, referred to above, it is clear that there was complete chaos in the respondent mill between the year 1982 to 1984. The workforce was on warpath. It was divided into splinter groups. The management was neck deep in the quagmire of industrial unrest, where the workers indulged in violence with impunity and the bedraggled management was feeling flummoxed in dealing with the workforce, which was a collage of groups each operating under different trade union level and each out doing the other in raising impossible demands with the management. No doubt legitimate union activities are the statutory rights of the workforce but this right cannot be converted into a license to indulge in violent activities and thereby endangering the very existence of the concern. Settlements arrived at with the various unions by the management were never adhered to, because these unions were not working in tandem. This was the scenario when the services of the petitioner were dispensed with by the respondent. In my opinion, in such a situation, it was not possible for the management to hold a domestic enquiry against the petitioner, because no officer or workman would have come forth to depose against the petitioner. On behalf of the petitioner 1969 Lab. I. C 1534 State of Maharashtra Bhaishankar Avarlam Joshi and another, 1983 II LLJ 26, between Central Railway and Raghbir Saran were cited. These authorities have not remotest bearing upon the facts of the present case. On the other hand, on behalf of the respondent 1984 Vol. 65 Indian Factories Journal 254 Rajinder Jha V/s Labour Court, Bokaro Steel City was cited. In this case, it was held that in case of dismissal evidence can be adduced by the management before a Labour Court or Tribunal to justify the order of dismissal and file a list of witnesses to be examined by it. Under these circumstances, the management was fully justified in not holding domestic enquiry against the petitioner before dispensing with the services and that from the evidence on record it is fully proved that the petitioner indulged in major misconduct in striking work on 30th August, 1984. Now, the question would be as to whether any interference by this Court to whittle down the order of dismissal under section 11A of the Industrial Disputes Act, 1947 is called for or not. On behalf of the petitioner, a prayer for lenient view was made, because it was argued that for this single act of indiscipline, petitioner should not have been awarded the harshest penalty of dismissal. This Court is not prepared to buy this argument, because had the workman alone misconducted, this Court could have taken a lenient view but he had exhorted other workmen also to join the same and thereby production suffered. This Court is aware of the fact that employment avenues in this country are shrinking day by day and this Court should be reluctant to swell the strength of unemployed. A workman who can resort to the extreme act of indiscipline resulting in stoppage of production hardly deserves discretionary relief of reinstatement. In this country millions are clamouring for cover. If any unit is closed or production suffer because of any act of indiscipline, this Court cannot countenance such a situation. However, to mitigate the hardship, the petitioner may suffer because of un-employment, he is awarded a sum of Rs. 7,000 as compensation, purely on compassionate grounds. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Dated the 29th July, 1986.

Presiding Officer,  
Labour Court, Rohtak.  
Camp Court, Hisar.

Endst. No. 45-85, 1061, dated 5th August, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the I. D. Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.  
Camp Court, Hisar.